

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to) RM-8012
Commercial Mobile Radio Services)

NYNEX REPLY COMMENTS

The NYNEX Companies ("NYNEX")¹ hereby submit their
Reply Comments in the above-captioned matter.

I. INTRODUCTION

In its NPRM, the Commission sought comments on: (1) whether equal access obligations should be imposed upon CMRS providers; (2) whether the Commission should adopt rules governing interconnection services provided by LECs to CMRS providers; and (3) whether the Commission should propose rules requiring CMRS providers to interconnect with each other.

Comments were filed by 73 parties representing, among others, cellular and CMRS providers, LECs, interexchange carriers and manufacturers. The positions of the parties on the issues raised by the NPRM were varied and, with several

¹ The NYNEX Companies are New York Telephone Company, New England Telephone and Telegraph Company, and NYNEX Mobile Communications Company.

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exceptions, there was no industry consensus on the complex issues before the Commission. In NYNEX's view, the decisions reached by the Commission should be guided by the objectives of ensuring the development of a competitive industry which will bring new services to the public in a manner consistent with Congress' intent that similar CMRS services be subject to similar regulatory requirements.

In these Reply Comments, we demonstrate that Congress' objective will best be achieved if the Commission imposes equal access obligations upon all CMRS providers only for so long as the MFJ's equal access requirements remain effective. We will also show that the Commission should not require LECs to tariff interconnection arrangements or impose interconnection requirements on CMRS providers. Finally, we demonstrate that the Commission should preempt state regulatory commissions from imposing interconnection obligations on CMRS providers.

II. THE COMMISSION SHOULD IMPOSE EQUAL ACCESS OBLIGATIONS UPON ALL CMRS PROVIDERS ONLY FOR SO LONG AS THE MFJ'S EQUAL ACCESS REQUIREMENTS REMAIN EFFECTIVE.

In its Comments, NYNEX showed that the imposition of equal access obligations upon CMRS providers will not necessarily benefit consumers. Equal access has not resulted in lower long-distance rates for BOC cellular customers. On the other hand, NYNEX and other BOCs are at a substantial competitive disadvantage because they, unlike their competitors, cannot purchase interexchange services at bulk discounted rates and pass the savings onto their customers. In order to eliminate this competitive disparity, NYNEX urged the Commission

to impose equal access obligations upon all CMRS providers until such time as the MFJ's equal access requirements with respect to the provision of wireless services are no longer imposed on the BOCs.²

Many parties argue that equal access obligations should not be imposed upon CMRS providers for a variety of reasons: CMRS providers do not have market power;³ the costs of equal access are significant;⁴ a cellular switch is not a bottleneck facility;⁵ there is no public demand for equal access;⁶ the imposition of equal access obligations will further delay the development of local exchange competition.⁷ NYNEX agrees with many of these arguments. However, the fact remains that NYNEX and the other BOCs continue to be bound by the MFJ's equal access obligations while the BOCs' cellular competitors are not subject to equal access. This is a serious regulatory inequity that must be rectified in order to implement Congress' directive that all CMRS providers compete under the same rules.⁸ Although imposition of equal access obligations

² Accord Ameritech Comments, pp. 1-2; Bell Atlantic Comments, p. 9.

³ See Cox Comments, pp. 1-3.

⁴ See Cox Comments, p. 14; GTE Comments, pp. 9-12. GTE's claim that it will cost \$23 million to provide equal access is grossly exaggerated.

⁵ See Alltel Comments, p. 4; CTIA Comments, pp. 3-15; GTE Comments, p. 4.

⁶ See Alltel Comments, p. 6; Highland Cellular Comments, p. 2.

⁷ See Cox Comments, p. 14.

⁸ See NPRM, ¶¶ 2, 39. Accord AT&T Comments, p. 1.

may cause consumers to lose benefits in the short term, they will be better off in the long run if a strong competitive market is retained.

In its recent Order approving the McCaw/AT&T merger, the Commission refused to impose equal access requirements as a condition of its approval, finding that the Communications Act does not require "parity for parity's sake."⁹ While that may be true with respect to landline services, Congress has clearly mandated otherwise with respect to CMRS. As the Commission recently noted, one of the principal objectives that Congress had in amending Section 332 of the Communications Act was to ensure that similar CMRS services are accorded similar regulatory treatment.¹⁰ There is nothing in the Budget Act amendments to Section 332 which suggest that the Commission may ignore this statutory responsibility simply because the regulatory disparity was created by the MFJ.

The best way to accomplish regulatory parity, however, is not to impose "permanent" equal access obligations on all CMRS providers. Rather, equal access obligations should be imposed upon all CMRS providers only for so long as the MFJ's equal access requirements remain effective.¹¹ The Commission

⁹ See Memorandum Opinion and Order, FCC 94-238, at ¶ 32 (September 19, 1994).

¹⁰ See Second Report and Order, GN Docket No. 93-252 (March 7, 1994), at ¶ 13, citing the Congressional Conference Report.

¹¹ Since the Commission has determined that PCS carriers and SMR carriers are similar to cellular carriers, they should also be subject to equal access obligations. See Bell

should actively support the BOCs' effort to have these outdated requirements removed.

III. THE COMMISSION SHOULD NOT REQUIRE LECS TO TARIFF INTERCONNECTION ARRANGEMENTS.

In its Comments, NYNEX showed that there is no reason to require LECs to tariff the rates for interstate interconnection service provided by LECs to CMRS providers. The current process of negotiating interconnection agreements has resulted in lower rates and more flexible service arrangements.

While most parties support the current process, several parties argue that the Commission should require the LECs to file tariffs in order to ensure CMRS providers are not discriminated against by the LECs.¹² NYNEX disagrees. The Commission's existing policies and procedures (including awards of damages and forfeitures in complaint proceedings) provide adequate assurance that LECs will not act in a discriminatory manner. As Bell Atlantic notes, the Commission has had a decade of experience with LEC interconnection with cellular carriers and has not found that tariffs are necessary. There is no need to change this approach now.

¹¹ (Footnote Continued From Previous Page)

Atlantic Comments, p. 7. NYNEX agrees that equal access obligations should not be extended to data services (e.g., CDPD). Although the MFJ's equal access obligations apply to such services absent a waiver, it is interesting to note that AT&T/McCaw did not commit to provide equal access for such services.

¹² See, e.g., Cox Comments, p. 6.

The Commission should also reject AT&T's suggestion that CMRS providers be required to file informational tariffs for their equal access services for a period of at least one year.¹³ This is inconsistent with the Commission's recent Order which required CMRS providers to cancel their federal tariffs.¹⁴ AT&T offers no good reason why this decision should be reversed now.

Comcast argues that the Commission should change its recently-adopted mutual compensation policy¹⁵ to one of "sender keep all."¹⁶ Comcast's proposal should be rejected. The Commission's mutual compensation policy is designed to ensure that both LECs and CMRS providers receive compensation for the reasonable costs incurred in terminating traffic on each other's network. Under Comcast's proposal, these costs would not be recovered by either party. Comcast offers no good reason why the Commission should change its mutual compensation policy at this time.

¹³ See AT&T Comments, pp. 11-12 n. 18.

¹⁴ See Second Report and Order, GN Docket No. 93-252 at ¶ 178.

¹⁵ See Second Report and Order, GN Docket No. 93-252, at ¶ 232.

¹⁶ Under Comcast's simplistic "sender keep all" proposal, LECs would not pay CMRS providers for terminating traffic on the CMRS providers' networks, and vice versa. Comcast's proposal assumes that the costs of terminating traffic are near zero.

IV. THE COMMISSION SHOULD NOT IMPOSE INTERCONNECTION REQUIREMENTS ON CMRS PROVIDERS.

In its Comments, NYNEX showed that the Commission should not impose mandatory interconnection requirements on CMRS providers.¹⁷ While NYNEX favors an open network architecture where all CMRS providers can interconnect with one another and with the landline network, NYNEX believes that this can best be achieved through good faith negotiations between CMRS providers rather than through inflexible regulatory mandates.

Virtually all of the commenting parties agree that interconnection requirements should not be imposed on CMRS providers. While the Commission could declare that CMRS providers have a basic obligation as common carriers to interconnect with other licensed carriers upon reasonable request, NYNEX believes that marketplace forces should be relied on in the first instance to determine the appropriate interconnection arrangements.¹⁸ Negotiated interconnection agreements will lead to lower rates and more flexible service arrangements that will allow CMRS providers to provide mobile to

¹⁷ There is no merit to NCRA's argument that Section 332(c)(1)(B) of the Communications Act requires CMRS providers to interconnect with other CMRS providers. The statute mandates interconnection only upon reasonable request pursuant to Section 201 of the Act. Section 201(a) of the Act gives the Commission the authority to order interconnection only "after opportunity for hearing" and only when the Commission "finds such action necessary or desirable [to further] the public interest."

¹⁸ The same holds true for roaming agreements. Contrary to Pacific Bell's suggestion (Pacific Bell Comments, p. 19), roaming agreements should also be subject to negotiation, and not mandated by the Commission.

mobile communication service in a more cost-effective manner.¹⁹ The Commission, however, should continue to oversee CMRS interconnection arrangements to ensure that requests for interconnection between CMRS providers are not unreasonably denied.

Although the Commission should not impose interconnection requirements on CMRS providers, NYNEX agrees that the Commission should require all CMRS providers to offer unrestricted, nondiscriminatory resale, except to licensed carriers which have held their licenses for at least five years.²⁰ This will ensure that all CMRS providers are subject to the same regulatory obligations.

NYNEX also agrees that the Commission should clarify that its resale policy allows a BOC to resell cellular service.²¹ Regulatory parity requires that BOCs that hold PCS licenses should have the same opportunity to resell cellular service as other PCS licensees. Such resale is also not inconsistent with the Commission's separate subsidiary requirement for BOC affiliated cellular carriers. The purpose of the rule was to bar LECs from providing facilities-based cellular service. Resale does not involve utilizing LEC

¹⁹ As McCaw points out, no useful purpose would be served by requiring that such contracts be filed. The Commission's complaint process is available to CMRS providers that have difficulty negotiating an interconnection agreement. See McCaw Comments, p. 23.

²⁰ See Bell Atlantic Comments, p. 18.

²¹ See BellSouth Comments, p. 25.

computer and switching facilities in the provision of cellular service.

The Commission should also permit LECs to disclose CPNI to its cellular affiliates subject to the requirements of the Commission's CPNI rules. This is consistent with the Commission's Order approving the AT&T/McCaw merger which allows AT&T to disclose cellular customer CPNI to McCaw.²² LECs should have the corresponding right to provide its cellular affiliates with LEC customer CPNI.

V. STATE AUTHORITY OVER CMRS INTERCONNECTION SHOULD BE PREEMPTED.

Several parties argue that in the event the Commission decides not to impose interconnection obligations on CMRS providers, it should not preempt any state from imposing such obligations.²³ NYNEX disagrees.

Under Section 332(c)(3) of the Communications Act, States are expressly precluded from regulating the rates charged by CMRS providers, including rates for intrastate service, unless the Commission grants the States authority to do so. Individual state regulation of interconnection service would have the potential to create a hodge-podge of requirements that would inhibit the development of an open network architecture. To prevent this from happening, Congress has mandated a uniform regulatory policy for CMRS. State regulation that imposes

²² See Memorandum Opinion and Order, FCC 94-238, ¶ 83 (September 19, 1994).

²³ See, e.g., NYDPS Comments, p. 6.

interconnection obligations on CMRS providers that are different from those imposed by the Commission would defeat Congress' mandate. Furthermore, it would be inconsistent for the Commission to allow State regulation of CMRS to CMRS interconnection while preempting LEC-cellular interconnection.²⁴

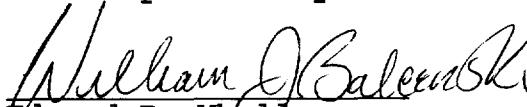
VI. CONCLUSION

For the reasons set forth herein and in our initial Comments, the Commission: (1) should impose equal access obligations upon all CMRS providers only for so long as the MFJ's equal access requirements remain effective; (2) should not require LECs to tariff interconnection arrangements or impose interconnection requirements on CMRS providers; and (3) should preempt state regulatory commissions from imposing interconnection obligations on CMRS providers. This will help ensure the development of a competitive CMRS industry in a manner consistent with Congress' intent that similar CMRS services be subject to similar regulatory requirements.

Respectfully submitted,

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²⁴ See BellSouth Comments, p. 22.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing NYNEX REPLY
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